



DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
104 ARMY PENTAGON  
WASHINGTON DC 20310-0104



January 27, 1997

MEMORANDUM FOR VICE DIRECTOR OF INFORMATION SYSTEMS FOR  
COMMAND, CONTROL, COMMUNICATIONS, AND  
COMPUTERS

SUBJECT: Transfer of Records Management Functions from the Office of the Director of Information Systems for Command, Control, Communications, and Computers (ODISC4) to the Office of the Deputy Chief of Staff for Personnel (ODCSPER)

The proposed transfer of records management functions from ODISC4 to ODCSPER has been the topic of numerous discussions between this office, ODISC4, and ODCSPER personnel over the past several months. Recently you asked that we document the advice we have provided previously on this subject. This memorandum responds to your request.

As explained before and as summarized below, the transfer of the records management mission from ODISC4 to ODCSPER is legally permissible, subject to the requirement that the DISC4, in his role as the Army's Chief Information Officer (CIO), retain continuing oversight of the records management mission.

Section 5125(a) of the Clinger-Cohen Act of 1996 vested agency CIOs with a variety of responsibilities under the Paperwork Reduction Act of 1995 (PRA) (specifically those listed in 44 U.S.C. § 3506), by naming the CIO as the agency official charged with PRA responsibilities (enclosure 1). Secretary West also noted the Army CIO's PRA responsibilities in his CIO appointment memorandum by referencing Chapter 35 of Title 44, United States Code (enclosure 2). Recent correspondence from the Office of Management and Budget to the DISC4 again has highlighted the importance of the CIO's PRA responsibilities (enclosure 3).

Within the PRA, 44 U.S.C. § 3506 describes federal agency responsibilities, and charges the agency head and the agency CIO with ensuring that those responsibilities are carried out (enclosure 4). Section 3506 is drafted such that paragraph (a) assigns responsibilities to the agency head and the CIO, while paragraphs (b) through (h) provide further direction regarding the execution of the agency's principal PRA activities. Paragraph (f) specifically references agency responsibilities for records management, and paragraph (g) addresses agency responsibilities for privacy and security. Accordingly, both of these areas of responsibility fall within the scope of the CIO's PRA duties.

a. The legislative history of the PRA is insightful in understanding why the CIO has been charged with agency records management responsibilities. The House Government Reform and Oversight Committee noted:

In the new era of electronic records, it is even more important to ensure effective records management at all stages of the information life cycle. Agencies increasingly rely on electronic mail for communication, on online systems for dissemination, and on CD-ROMs for storing large volumes of data. Unless information created in these formats is properly managed to insure its integrity and archival preservation, much of the Government's record will be lost.

H.R. Rep. No. 37, 104th Cong., 1st Sess. 30 (1995).

b. With regard to the privacy and security responsibilities of the CIO under the PRA, 44 U.S.C. § 3506(g) notes that agencies shall "assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5 . . . ." Execution of agency responsibilities under these sections of United States Code, more commonly known as the Freedom of Information Act (FOIA) and the Privacy Act (PA), therefore is also a function of agency CIOs.

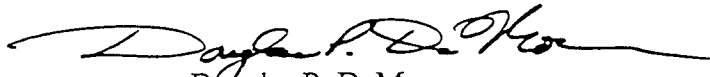
The vesting of records management, FOIA, and PA responsibilities in agency CIOs does not necessarily mean that these functions must be performed directly by the Army CIO (i.e., the DISC4), nor by his staff within ODISC4. A provision of the Goldwater-Nichols Act, 10 U.S.C. § 3014, provides a basis for the Army Staff to assist the DISC4 in the execution of his statutory responsibilities (enclosure 5). Thus, although paragraphs (c)(1) and (c)(2) of 10 U.S.C. § 3014 require responsibility for information management to lie exclusively with a single Secretariat organization (the DISC4 per General Order 12), paragraph (c)(4) permits the Army Staff to assist or otherwise participate in the information management function, "under the direction of the office assigned responsibility for that function in the [Secretariat]."

Consequently, ODCSPER may perform the records management, FOIA, PA, and related information management functions for the Army, but that organization must do so subject to the oversight and direction of the DISC4 in his role as the Army CIO. In addition, because 10 U.S.C. § 3014(c)(3) states that, "The Secretary shall prescribe the relationship of [the] office or other entity established or designated [to perform information management within the Secretariat] to the Chief of Staff and the Army Staff . . .," a transfer of the records management mission from ODISC4 to ODCSPER should occur only pursuant to a Secretarial directive, or a memorandum of understanding (MOU) or similar agreement between the two organizations, to define how the DISC4 will continue to oversee and direct this operation within ODCSPER consistent with his statutory responsibilities.

How the CIO and the DCSPER may agree that the CIO will retain oversight for PRA functions transferred to ODCSPER for day-to-day execution (e.g., coordination on policy changes, periodic reporting, etc.) is a management decision limited by the statutory constraints described above. Although this office is available to review a draft MOU or similar document to ensure compliance with the law, it is not the function of this office to make the management choices necessary to define this relationship.

Finally, please note that records management is specifically listed as a duty of the DISC4 in General Order 12. Because the DISC4 will continue to bear responsibility for this function even after transfer of the mission to ODCSPER, no change in the general order is required, but an amended General Order 12 could be used as a means to define the relationship between ODISC4 and ODCSPER in lieu of an MOU or other directive.

Please call me at 697-4349 if you have any questions.

  
Douglas P. DeMoss  
Assistant to the General Counsel

Enclosures